Canadian Forces Grievance Board / Comité des griefs des Forces canadiennes

Canadian Forces Grievance Board

05

Mission To review grievances, in order to render fair and impartial findings and recommendations in a timely and informal manner to the Chief of the Defence Staff and the grievor. **Vision** The Board's grievance review skills and expertise will be recognized through the quality of its findings and recommendations. This will be realized when: • The principles of integrity and fairness guiding the Board create a climate of confidence for members of the Canadian Forces; • Members of the Canadian Forces are confident that the Board's findings and recommendations are objective, timely, fair and impartial; • The work of the Board has a positive impact on the conditions of work for military personnel and contributes to a better understanding and application of regulations, policies, and guidelines; • Other public agencies, in Canada and abroad, consult the Board regarding their own grievance management and review processes.

Annual Report

Canada

Canadian Forces Grievance Board 2006
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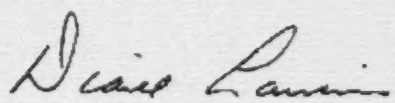
March 31, 2006

The Honourable Gordon O'Connor
Minister of National Defence
National Defence Headquarters
MGen Georges R. Pearkes Building
101 Colonel By Drive
Ottawa, Ontario
K1A 0K2

Dear Minister:

Pursuant to section 29.28(1) of the *National Defence Act*, I hereby submit the 2005 annual report on the activities of the Canadian Forces Grievance Board for tabling in Parliament.

Yours truly,



Diane Laurin
Chairperson

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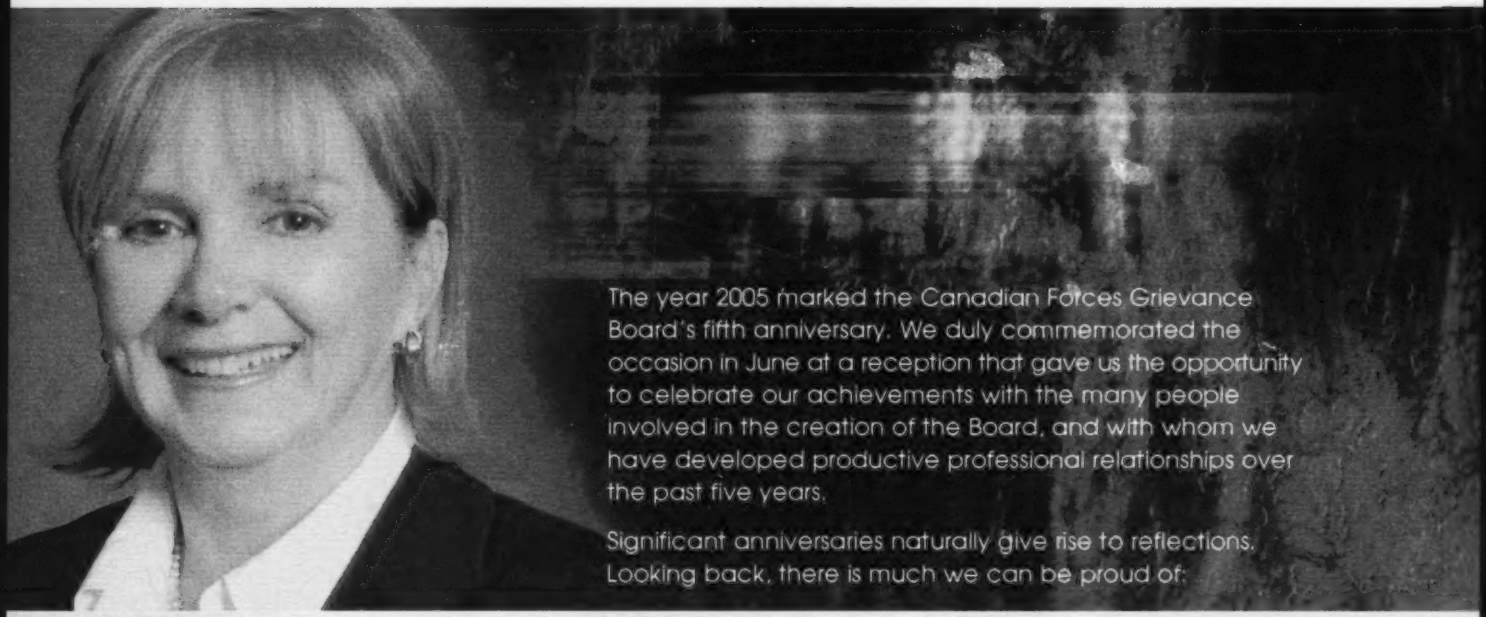
Message from the Chair

Diane Laurin



The year 2005 marked the Canadian Forces Grievance Board's fifth anniversary. We duly commemorated the occasion in June at a reception that gave us the opportunity to celebrate our achievements with the many people involved in the creation of the Board, and with whom we have developed productive professional relationships over the past five years.

Significant anniversaries naturally give rise to reflections. Looking back, there is much we can be proud of:

- **Increased outreach:** We established our profile and raised awareness—particularly among the men and women of the Canadian Forces—about our role in the administrative military justice system. We visited military bases across Canada, bringing our message through town hall meetings and open discussions. We ourselves gained invaluable insights from our first-hand look at the realities of base life through tours of base facilities. Between visits we seized all opportunities to address military and civilian audiences of specialists who wanted to know more about our work. The creation of and constant improvements to our communications tools also enable us to reach a larger, more diversified audience.
- **Recognition received:** The Board has been recognized for our pioneering role, receiving invitations to describe our work to the military, and hosting delegations from other countries to view how we have set up our organization. However, a personal highlight for me this year was being presented with the Canadian Forces Medallion for Distinguished Service, on June 15, by the Chief of the Defence Staff (CDS), General Rick Hillier. I am especially proud of this award because it symbolizes the Board's success as a team.

- **Accomplishments:** We all take great satisfaction when our work makes a difference to the military grievance system. Aside from having attained our goal of clearing most of the case backlog while also completing new cases, we are pleased that, in 2005, the CDS has fully or partially endorsed our recommendations in 92% of the cases.

  In addition, our five years of dealing with grievances have helped us to identify and solve systemic issues that prevent additional new grievances from being launched. Our findings and recommendations provide a definitive interpretation of particular policies that can serve as a guide for future cases. We consider this approach to be an important, value-added component of our work as an independent oversight body.

- **Meeting a six-month objective:** With an improved closure rate for 2005, we expect to increase our efficiency even further: our goal is to complete the review of grievances, on average, within six months or less of being referred to the Board.

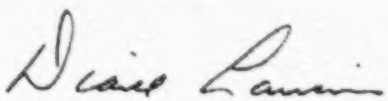
Looking Ahead

Reaching a five-year milestone naturally leads us to think about the next five years and beyond, and especially about how we can build on what we have accomplished so far. Armed with the experience of our first five years, we have been examining for the past few months how the Board can improve its efficiency and that of the Canadian Forces grievance system as a whole. A report will be released in 2006.

Front and center among our concerns is the lack of clarity surrounding the mandate of the many organizations involved in the Canadian Forces complaints/grievance resolution process.

In Conclusion

As we come to the end of our first five years, we realize that it has been a privilege to work in this challenging area. Looking ahead, we are energized and inspired by our many successes. We will continue to strive for maximum efficiency within our processes and organization, and we will continue to work in concert with the other organizations involved in the process in order to make the CF grievance process the best it can be.



The Canadian Forces Grievance Board

Mission

To review grievances in order to render fair and impartial findings and recommendations in a timely and informal manner to the Chief of the Defence Staff and the grievor.

The Cornerstone of the Canadian Forces Grievance Board:

A fair and impartial grievance process

It is self evident that military forces are most effective when morale is high. Many factors contribute to morale, ranging from confidence in a force's leadership to a conviction that a country's citizens and government take pride in their military's contributions. Among the men and women who serve in the military, another critical factor in morale is the conviction that they will be treated fairly by their leaders and their government.

In Canada, the Somalia events of 1993 spurred several inquiries and reviews, each of which raised a number of questions about the military justice system, military training, and leadership in the Canadian Forces (CF). Confidence in the capacity of the CF to deal with internal complaints and grievances openly and fairly was low, thus fuelling the demand for greater independent external oversight.

Ultimately, significant amendments were made in 1998 to the *National Defence Act* (NDA), the *Queen's Regulations and Orders for the Canadian Forces* (QR&O), and to the Forces' administrative structures, with a view to resolving the apparent shortcomings. These amendments, designed to modernize and strengthen the military justice system, included simplification of the grievance process and the creation of an external review board that would function as a quasi-judicial tribunal: the Canadian Forces Grievance Board (CFGB). The creation of the Board made Canada the first country in the world to have a civilian body mandated to review military grievances.

Impetus for CFGB's establishment:

1995: Release of *A Report on the Study of Mechanisms of Voice/ Complaint Resolution in the Canadian Armed Forces*
— Report by BGen (ret'd) L.T. Doshen

1996: Armed Forces Council orders development of a streamlined grievance system.

1997: Release of *The Report to the Prime Minister on the Leadership and Management of the Canadian Forces*
— Report of the Minister of National Defence, the Honourable Douglas M. Young

1997: Release of the findings of the Somalia Commission of Inquiry, in which the Honourable Justice Gilles Létourneau reiterated the need for changes to the military justice system.

1998: Amendments made to the *National Defence Act*. These amendments were designed to modernize and strengthen the military justice system, including simplification of the grievance process and the creation of an external review board.

2000: Canadian Forces Grievance Board commences operations on June 15.

Mandate

The Board's mandate is to review all military grievances referred by the Chief of the Defence Staff (CDS), as stipulated in the NDA and Chapter 7.12 of the QR&O. Following its review, the Board submits its findings and recommendations to the CDS, who is the final adjudicator on the grievance. The grievor also receives a copy of the Board's findings and recommendations.

The Board has quasi-judicial powers: it can summon witnesses, and compel them to give oral or written evidence. It can also order the production of documents or things. Hearings by the Board are held in private, unless the Chairperson deems that a public hearing would benefit the participants and would serve in the public's interest.[1]

The types of grievances referred to the CFGB are set out in Chapter 7.12 of the QR&O:

(1) The Chief of the Defence Staff shall refer to the Grievance Board any grievance relating to the following matters:

(a) administrative action resulting in the forfeiture of, or deductions from, pay and allowances, reversion to a lower rank or release from the Canadian Forces;

(b) the application or interpretation of Canadian Forces policies relating to expression of personal opinions, political activities and candidature for office, civil employment, conflict of interest and post-employment compliance measures, harassment or racist conduct;

(c) pay, allowances and other financial benefits; and

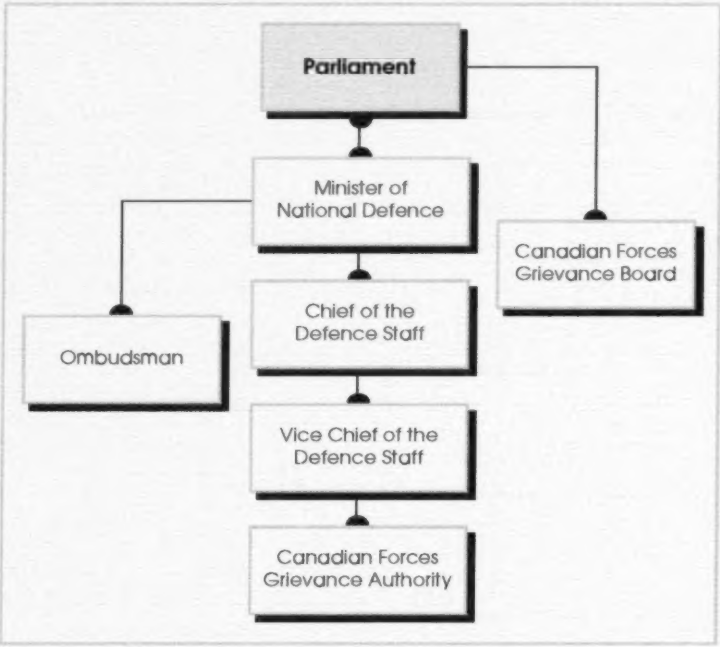
(d) the entitlement to medical care or dental treatment.

(2) The Chief of the Defence Staff shall refer every grievance concerning a decision or an act of the Chief of the Defence Staff in respect of a particular officer or non-commissioned member to the Grievance Board for its findings and recommendations.

In accordance with section 29.12 of the NDA, the CDS may also refer any other grievance to the Board.

The Board reports directly to Parliament through the Minister of National Defence who tables its annual report.

Reporting to Parliament



[1] *National Defence Act*

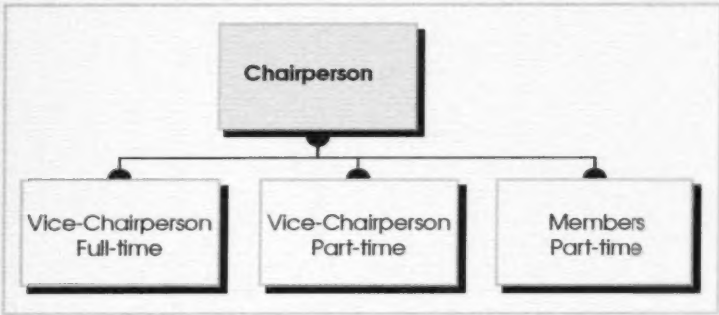
Vision

The Board's grievance review skills and expertise will be recognized through the quality of its findings and recommendations.

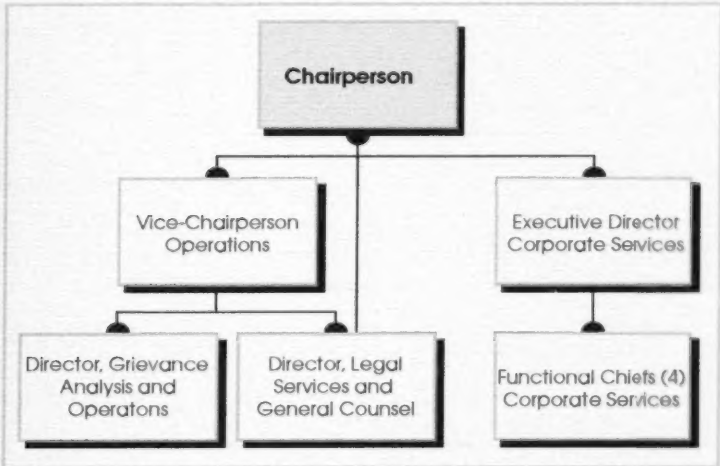
This will be realized when:

- The principles of integrity and fairness guiding the Board create a climate of confidence among members of the Canadian Forces (CF);
- Members of the CF are confident that the Board's findings and recommendations are objective, timely, fair and impartial;
- The Board's work has a positive impact on the working conditions of military personnel and contributes to a better understanding and application of regulations, policies and guidelines;
- Other public agencies, in Canada and abroad, consult the Board regarding their own grievance-management and review processes.

Board Members



The Management Team



Board Structure

As an administrative tribunal, the Board is independent of the Department of National Defence (DND), although DND has overall responsibility for the policy area in which it operates. The Board consists of Governor in Council appointees who decide, alone or in panel, on any given case. Board members are responsible for reviewing grievances and issuing findings and recommendations to the CDS.

Under the NDA, the Governor in Council may appoint a full-time chairperson, at least one full-time vice-chairperson and one part-time vice-chairperson, and any other members (full- or part-time), needed to carry out its functions. Appointments may last up to four years and may be renewed. Members may be removed by the Governor in Council for cause.

Although Board members and staff are civilians, they include former military personnel. This mix brings a broad range of knowledge and experience necessary for the Board's work.

The Board members review case files and are responsible for the findings and recommendations submitted to the CDS. All Board employees — most notably the grievance officers and lawyers — support the Board members. Legal counsel also provide advice to grievance officers and members on a wide range of issues. The corporate services group is responsible for, among other tasks, strategic planning, performance reporting, human resources and communications.

The CF Grievance Process: a two-level system

Level I: Review by the Initial Authority (within the Canadian Forces)

A common misconception about the Canadian Forces grievance procedure is that a grievor can submit a grievance directly to the Board. In fact, the process does not begin with the Board, but with the grievor's Commanding Officer (CO):

- Step 1: The grievor submits the grievance to his or her CO.
- Step 2: If the CO cannot act as the Initial Authority (IA), he or she submits the grievance to someone who can act as the IA, i.e., the next superior officer having the responsibility to deal with the matter. If the grievor is satisfied with the IA's decision, the grievance process ends there.

- Grievances mandatorily referred to the Board must be decided by the CDS personally.
- The CDS is not bound by any findings and recommendations of the Board; however, the CDS must provide reasons, in writing, in any case where the Board's findings and recommendations are not accepted.

Level II: Review by the CDS

Grievors who are dissatisfied with the Initial Authority's decision have the right to have their grievance reviewed by the CDS, whose decision is the final stage in the grievance process. Grievors initiate this second level of review as follows:

- Step 1: Grievors submit their request for a second level of review.
- Step 2: For those grievances that fall within the Board's mandate, the Director General, Canadian Forces Grievance Authority (DGCFGA) forwards the grievor's file, on behalf of the CDS, to the Canadian Forces Grievance Board.

The Board's procedural response

When the Board's registrar receives the grievor's file from the DGCFGA, he sends a letter of acknowledgement to the grievor, and in accordance with the rules of procedural fairness, discloses the information in the file to the grievor. The Board also invites the grievor to submit additional information related to the case. Any information acquired by the Board will be disclosed to the grievor. A grievance officer conducts an in-depth analysis, which may involve a lawyer, after which the assigned Board member develops the final findings and recommendations. These are subsequently forwarded to the CDS with a copy to the grievor.

2005: The Year in Review

Section I.
Significant Events

Celebrating a Fifth Anniversary and a CF Medallion for Distinguished Service

On June 15th, the Board celebrated its fifth anniversary. To mark the special occasion, a reception was held for current and former employees, and several stakeholders, including the CDS, General Rick Hillier.

"I cannot take credit alone. Our success has truly been a team effort, thanks to many of you here today."
— Chairperson Diane Laurin, CFGB 5th anniversary celebration, June 15, 2005

The occasion provided the Board with the opportunity to reflect on the progress it has made in several areas since it began in 2000. The anniversary also served to launch the Board's own retrospective report on its creation and growth, *The First Five Years 2000–2005*.

The June event held a surprise for Chair Diane Laurin: she received the highest honour that the CF can bestow on a civilian—the Canadian Forces Medallion for Distinguished Service. When General Hillier presented the award, he singled out Ms. Laurin's unique contribution to the CF: "Through the intervention of convincing conclusions and fair recommendations, the Board, under the guidance of Ms. Laurin, was able to elevate the confidence of military members in regard to the grievance process and to target the areas where human resource policy should be reinforced, thereby contributing to the improved morale and efficiency of the Canadian Forces."

Ms. Laurin also received a congratulatory letter from the Minister of National Defence, the Honourable Bill Graham, who wrote: "I will take advantage of this occasion to let you know just how much I recognize the efforts that you and your team have undertaken. The Canadian Forces Grievance Board is an important asset for the military justice system."

New Board Members

Addressing vacancies of more than two years, 2005 also saw the appointment of two new part-time Board members, Gary Wiseman (appointed June 2, 2005) and Marc F. Tremblay (appointed December 5, 2005). Both Mr. Wiseman and Mr. Tremblay's biographies can be found in the Appendices.

The Chairperson with new members, Gary Wiseman (top) and Marc Tremblay.

Increased Outreach

The CFGB has steadily increased its outreach activities in order to connect with the men and women who serve in the CF, and to ensure that its members and employees truly understand the conditions under which CF members carry out their duties. Outreach also helps the Board to increase awareness of its own role in enhancing the quality of life in the Canadian Forces.

The Board relies on a variety of vehicles for meeting these goals, from speaking at conferences and town hall meetings, to visiting CF bases, and hosting visitors who want to know more about Canada's unique approach to the military grievance process. This year the Board supplemented these face-to-face opportunities with tools, such as a new look for its website (www.cfgb-cgfc.gc.ca), more regular postings of its case summaries, a commemorative report (*The First Five Years 2000-2005*) and exposure on the Defence Information Network (http://national.mil.ca/group_e.asp).

Board members and senior management on tour in Esquimalt (Victoria).

Getting the Word Out

"Who we are and what we do" was the central theme for the various presentations made throughout the year by the Chair. Speaking to participants on a National Securities Course in Geneva, Switzerland; the Canadian Forces Chief Warrant Officer Conference in Quebec City; and the Army Council and the Ombudsman's employees, at two separate events in Ottawa, Diane Laurin highlighted the precedent-setting role that the Government of Canada created by establishing the Canadian Forces Grievance Board. Further, her presentation to the Ombudsman's employees provided an excellent opportunity to promote awareness and understanding of each organization's evolving roles, as well as opportunities to exchange insights into their own differing roles and experiences with complaint resolution.

The Vice-Chair, James Price, spoke to CF members at two town hall meetings this past winter, one in Victoria and the other in Halifax. He was also co-presenter with the Chair to the Army Council, and a keynote speaker at the Army G1 Conference in Ottawa. In November, Mr. Price presented "Building a Tribunal from the Ground Up" at the 2005 Conference of Ontario Boards and Agencies (COBA) in Toronto.

Part-time Board Member Naomi Levine addressed a key group of CF professionals on the theme of "Enhancing the Development of Human Resource Officers" at the 2005 Air Force Human Resource Officer's Conference in Winnipeg, Manitoba. The invitation noted that her experience as a lawyer and member of the Board would provide the officers with a different perspective on the handling (i.e., investigating or resolving) of grievances. Since these HR officers are often involved when grievances are first raised at the unit level, learning how they are resolved and analyzed by the Grievance Board was beneficial.

A visit to Maritime Forces Pacific (MARPAC), with Board members and senior management took place in February, during which time the Chair and Vice-Chair made a joint presentation to CF members in Esquimalt. Grievance officers toured Maritime Forces Atlantic (MARLANT) in March. Both of these visits provided the Board members and staff with a first-hand, personal look at the day-to-day lives of Canada's navy. Thanks to the excellent tours arranged by each base's senior officers, every visit contributed invaluable insight to the Board's collective understanding of the environment in which the navy personnel work and live.

The navy personnel's interest in the Board's role and responsibilities was also evident during the two town hall meetings and other opportunities for exchange with military staff. These and future visits are integral to the Board's goal of raising awareness of its contribution to a fair and efficient grievance process for Canada's military.

Visits Received from Australia

In late June, the Board welcomed Rosemarie Hawke with the Commonwealth and Defence Force Ombudsman in Australia. Ms. Hawke's capacity as Director of their Defence team, as well as her team's role in complaint resolution mirrors the CFGB's role in many ways. Ms. Hawke met with the Board's Vice-Chair and senior management officials who gave an overview of the Board's internal grievance process and the overall CF process, thereby providing the opportunity for participants to share information on current issues affecting their respective investigation of complaints.

A visit from the Australian Defence Force (ADF) followed in July. The Defence Advisor of the Australian High Commission in Ottawa, Tim Grutzner, along with Geoff Earley, ADF Inspector General, and Helen Marks, Director of Alternative Dispute Resolution and Conflict Management came to the Board as part of a fact-seeking mission. This visit followed the Review of the ADF redress of the grievance process and the Australian Senate Report into the Effectiveness of the ADF's Military Justice System.

A First Hearing

October 2005 saw the Board conduct its first hearing in a grievance case. The Board addressed certain issues in the grievance that could best be explored through a hearing.

The closed hearing in this case provided the opportunity for both parties to present witnesses and submit further evidence. The rules for conducting hearings state that only issues present in the original complaint can be dealt with — no new issue can be added. The hearing took place over one day and involved five witnesses, including the grievor.

The evidence helped the Board formulate its final findings and recommendations, but at the time of printing, the CDS's decision in the case had not yet been received.

Section II.
Operational Statistics

CFGB's Workload to Date

The Board continued to improve on its closure rate (number of cases completed divided by the number of cases received) improving from 1.65 cases in 2004, to 1.87 cases in 2005. The average time to treat cases in past years has been 192 business days. This figure has since been reduced to an average of 138 business days, representing an increase of 28% in process efficiency.

Overview of CDS Decisions in 2005

In 2005, the CDS provided decisions on 128 grievances, and fully or partially endorsed 92% of the Board's recommendations. Eight additional cases that had been reviewed by the Board were either resolved by the CF by means of an Informal Resolution (five cases) or were withdrawn by the grievor at the CDS level (three cases) subsequent to the issuance of the Board's findings and recommendations.

Table 1
CFGB Workload

CFGB WORKLOAD OVERVIEW	2000	2001	2002	2003	2004	2005
Cases in process at beginning of the year	0	165	170	255	274	207
Cases received for the year	179	105	210	148	107	80
Cases returned to DCFGA for re-evaluation	0	0	-5	-2	-4	0
Cases completed for the year	14	100	120	127	170	144
Cases remaining in the process at the end of the year	165	170	255	274	207	143
Closure rate (# of cases completed divided by # of cases received)	0.07	0.95	0.58	0.86	1.65	1.87

Table 2
2005 CDS Decisions

	CDS DECISIONS RENDERED IN 2005			
CFGB's Findings and Recommendations (F&R)	**CDS endorses CFGB's F&R**	**CDS partially endorses CFGB's F&R**	**CDS does not endorse CFGB's F&R**	**Totals**
Upheld	18	13	4	35
Partially Upheld	13	8	1	22
Denied	63	1	5	69
Withdrawn	2	0	0	2
Totals	**96**	**22**	**10**	**128**

In the 10 cases (representing approximately 8% of the decisions rendered by the CDS in 2005) where the CDS did not endorse the Board's findings and recommendations, the disagreements, for the most part, came down to a matter of interpretation or judgement.

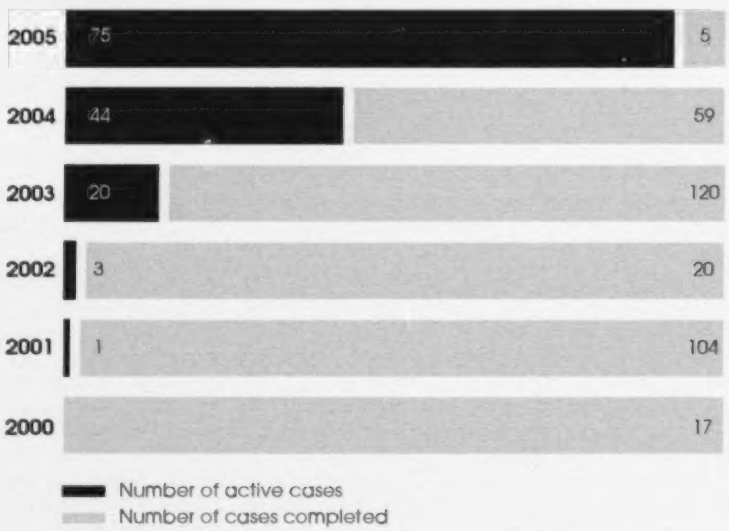
Since 2000, the CDS has endorsed the Board's findings and recommendations in 77% of the cases; partially endorsed in 15%; and did not support in 8%.

Status of the Inventory of Cases by Year Referred to the Board

The following table represents an overview of the inventory of cases by the year they were referred to the Board. As of December 31, 2005, 93% of all backlog cases (those received up to December 2003) are now complete, with the remainder to be completed by March 2006.

Twenty-four CF grievances pre-dating 2003 remain open. A total of 143 cases, including the Board's active caseload, remain open in the case inventory.[2] The Board expects that it will be able to reduce review times significantly, so that the majority of cases can be completed, on average, within six months of referral to the Board. However, not all cases are equal in terms of the time it takes to complete a review. Several factors outside the Board's control will continue to add to the time it takes to review a grievance. These include: the expediency with which the file is referred to the Board; the complexity of the grievance; the promptness with which the Board receives additional information from either the grievor or the CF; and the number of Board members available to review grievances at any given time. That said, all stakeholders in the CF grievance process are striving to resolve grievances within the proposed one-year time limit suggested by former Supreme Court Justice, Antonio Lamer, in his 2003 review of the NDA.[3]

Table 3
Case Inventory: Status and Year Referred



[2] At the time of print, all 2001 and 2002 cases were completed and sent to the CDS for his decision.

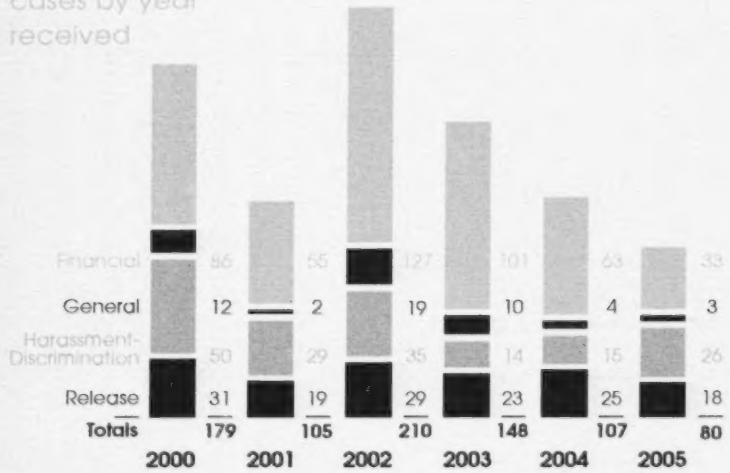
[3] The Right Honourable Antonio Lamer, *The First Independent Review by the Right Honourable Antonio Lamer, P.C., C.C., C.D. of the provisions and operation of Bill C-25, An Act to amend the National Defence Act and to make consequential amendments to other Acts, as required under section 96 of Statutes of Canada 1998, c.35, 2003.*

General Categories of Grievances Referred

Table 4 provides an overview of the general categories of grievances that the Board has received over the past six years. While the Board received fewer grievances in 2005 than in any other year, the lull is not expected to last — if a backlog occurs at the IA level, this will undoubtedly result in an influx of cases to the Board.

Table 4

Distribution of category of cases by year received



Conclusion

During 2005, the Board took a few moments to reflect on the many challenges met. But ambitious objectives also fuel progress and as a pro-active organization, the Board is now focused on the new challenges ahead.

In addition to its operational activities, the Board intends to maintain a strong focus on learning for both new and existing staff. The Board will align its Human Resources practices to the requirements of the new *Public Service Modernization Act* (PSMA). More specifically, this will include training managers and HR staff in the provisions of the PSMA, and conducting awareness sessions for employees.

There is broad consensus about what needs to be done next, and a feeling of optimism fed by the confidence of previous successes. The Board will continue to promote solutions that will benefit grievors through timely and just resolutions to their complaints. Ensuring efficient processes and reducing bureaucracy to a minimum will contribute to this goal. The Board will also work in concert with other organizations involved in the process in order to improve the CF complaint resolution system.

An Issue of Procedural Fairness, Case Summaries and Systemic Issues

An Issue of Procedural Fairness

There is an old adage about fairness: justice should not only be done but be seen to be done. As such, there are two primary rules that underline the right to procedural fairness: the right to be heard and the right to an impartial hearing.

The right to be heard includes the right to be informed of the case being made against the member, its subject, and its consequences in a timely manner in order to allow the member concerned to present comments to the deciding authority.

The right to an impartial hearing means that the decision-maker must be unbiased, and act in good faith.

In a number of files reviewed last year, the Board found the rules of procedural fairness had not been followed during the course of an administrative review.

For example, in one instance regarding a harassment investigation, the grievor was not given the opportunity to examine the statements made by witnesses. The Board noted it and the CDS agreed with the Board. Because the Responsible Officer (RO) had based his decision on a flawed investigation, the investigator's report, the supporting documentation, the RO's decision, and all related documents were ordered removed from the CF member's file.

In another case, a Commanding Officer who was to be relieved from command was not provided with all the information considered by the deciding authority. The CDS agreed with the Board that the grievor should have been given the information that was used to support the decision against him.

And finally, another case showed the grievor had not been given all relevant information before the file reached the Board. The CDS agreed that the grievor should have received a copy of the complete grievance file prior to the Board completing disclosure in the process of its analysis, and that a timely presentation of this information may have allayed the grievor's concerns and obviated the need for the grievance.

The CDS has been largely positive in his response to the Board's concerns regarding the lack of procedural fairness. The Board is optimistic that any follow-up as a result of its observations may help to alleviate future problems of this nature.

Entitlement to Leave Travel Assistance – Definition of Dependant Child

The basis of the grievor's complaint was that single or divorced CF members who had children from a previous relationship were entitled to support to visit these children under the provisions of Leave Travel Assistance (LTA), but re-married CF members were not entitled to such financial support.

The Board found that the grievor had been treated fairly and in accordance with the LTA policy as currently written and applied; hence, the Board recommended that the grievance be denied. Nonetheless, the Board found that the purpose of the LTA policy was to allow CF members the opportunity to visit family, and that the current application of the LTA policy was not aligned with the intent of the benefit. In this respect, the Board recommended that the LTA policy be reviewed with a view towards aligning this intent with the application and, ideally, providing opportunities for CF members, such as the grievor, to receive the benefit.

Furthermore, the Board found that it was inappropriate for the CF to change the definition of dependant in order to suit different purposes, and that the lack of explicit policies to recognize situations such as those in the present case perpetuated a view of family that is antiquated in terms of society today. Thus, the Board recommended that the efforts of the Directorate of Quality of Life (DQOL), to develop a broad and consistent view of both family and the definition of dependant, be expedited.

The Acting CDS (A/CDS) partially agreed with the Board's recommendations. He endorsed the recommendation to deny the grievance on the ground that the grievor had been treated in accordance with the LTA policy. However, he was satisfied that Compensation and Benefits Instruction CBI 209.50 supported the interpretation that the LTA benefit is designed to allow the member to travel home rather than to reunite family. The A/CDS insisted that CFAO 209-15 cannot be used to expand or amend CBI 209.50 in order to give a broader interpretation of "home." The A/CDS disagreed with the Board's recommendation that the CDS expedite the efforts of DQOL to develop a broad and consistent view of family for the CF, considering it was premature to action findings in this area based on the grievor's file alone and in the absence of a co-ordinated, coherent approach by government. The A/CDS forwarded a copy of his decision to the ADM (HR-Mil) to ensure that it was brought to the attention of the officials responsible for developing CF policy in this area.

Entitlement to Occupy Family Housing

The grievor, a single member of the CF with two children whom he saw on weekends, argued that the allocation of Married Quarters (MQ) was unfair to single military members without dependants, as it placed married members in a better financial position than single members.

The Board found that the grievor did not establish a *prima facie* case of discrimination on the basis of marital or family status. However, the Board did find that the CF's view of the family should be modernized and that the allocation of MQ unfairly penalized divorced or separated members with less than 50% custody arrangements. The Board recommended that the CF review its practice regarding the allocation of MQ to ensure these situations are considered, and that all members are treated fairly under the regulations.

The CDS agreed with the Board's recommendation to deny the grievance. The CDS did not agree with the Board's finding that the CF's approach regarding allocation of MQ does not give appropriate recognition to divorced or separated members with custody arrangements where custody is less than 50%, stating that it was premature and that the finding is based on this grievance alone. The CDS was satisfied that work has commenced within the Director Quality of Life organization to review family-related policies and the CF must work with other departments and agencies facing similar issues. Consequently, the CDS did not accept the Board's recommendation that the CF review its practice regarding the allocation of MQ, but he directed that the grievor's file be brought to the attention of the authorities responsible for developing the CF policy in this area.

Release - Item Changed from 4C) to 5C)

Further to a workforce adjustment at his reserve unit, the grievor was offered three choices: a transfer to another unit, a change of occupation or a voluntary release. The grievor chose to be released, but asked for this to take place under item 5(c) – completed service for which required – considering that this was a job cut. The grievor was nonetheless released under item 4(c) – on request, other causes.

The Board reviewed the release items for officers and found that the grievor's situation did not indicate a voluntary release. The Board further found that the facts at issue were in keeping with a release under item 5(c), as per the grievor's request.

The Board recommended that the CDS uphold the grievance.

The CDS concurred with the Board's recommendation. The CDS concluded that the CF did not place sufficient effort into finding another position for the grievor within his unit, without which he would be obliged to transfer or change trades. The CDS therefore concluded that the grievor's release had been dictated by events, and was not the result of personal choice but of "poor timing in the implementation of the (Army Reserve Establishment) ARE." The CDS directed the grievor's release item be changed from 4(c) to 5(c), with payment of all associated benefits, more specifically the Reserve Force Retirement Gratuity.

Interim Lodging Meals and Incidentals – Allotment of Married Quarters

Prior to his posting, the grievor had sought an area as his first choice of Married Quarters (MQ), but because it was not available, he accepted MQ in another area. Days before his move, the grievor was offered MQ in his first choice area that would become available, "as is", ten days after his Change of Strength date. The grievor took steps to ensure that he would be reimbursed the ten days of Interim Lodging Meals and Incidentals (ILM&I), and then accepted it. Upon arrival in his new posting, the grievor was told that he would not be reimbursed the additional days of ILM&I.

The Board found that the IRPP 2002 policy was ambiguous with regard to reimbursement of ILM&I. In fact, the policy itself allowed for reimbursement up to 21 days if a member awaited MQ as a result of a personal decision. The Board also found that the practices where the grievor was posted with regard to the allotment of MQ contributed to the grievor's need for additional days of ILM&I.

The Board recommended that the CDS uphold the grievance.

The CDS agreed with the Board's recommendation that the grievance be upheld. In the CDS's view, the CF, by not correctly applying the MQ allocation policy, ultimately contributed to the grievor's inability to arrange a door-to-door move to his first choice area from the outset of the MQ allocation process. The CDS considered therefore that, for reasons beyond his control, the grievor was placed in a position to be separated from his Household Goods and Effects in order to move to his first choice. Accordingly, the CDS directed that the grievor be reimbursed from his Basic Core envelope for his additional ILM&I and storage expenses and that his Enhanced Core/Customized envelope be reviewed in order to action any other adjustments and/or reimbursements that needed to be made. Concerning the practice of allotting MQs based on rank, the CDS directed that this issue and its interaction with Integrated Relocation Pilot Project be reviewed and actioned as necessary and that he receive a report in due course.

Release – Violation of Procedural Fairness

While in Bosnia the grievor had displayed unprofessional behaviour and was diagnosed with an adjustment disorder. The grievor was medically repatriated from Bosnia. Upon his return, the grievor was given a temporary medical category, and initiated an application for voluntary release. The Medical Officer recommended that the grievor be assigned a permanent medical category of G5 O5; however, the Surgeon General assigned the grievor a permanent medical category of G2 O3, which the grievor would maintain on release regardless of subsequent medical assessments.

The CF initiated a concurrent administrative release, and the grievor was not granted an opportunity to participate because his application for voluntary release precluded any need for his participation. It was determined that the grievor's inability to adjust to a military environment was not medical in nature and the grievor was released under item 5(d) – Not Advantageously Employable.

The Board found that the procedure used to release the grievor from the CF was deficient and that his release was a violation of procedural fairness. The Board recommended that, based on the medical evidence, the grievor's release item be changed to 3(b) - Medical.

The CDS endorsed the Board's findings and recommendations. The CDS stated that there was no policy suggesting that a medical condition must by diagnosed as chronic in order to result in a medical release. The CDS also agreed with the Board's finding that, despite the grievor's pending voluntary release, the CF should have notified the grievor of the intent to release him under item 5(d) and, thus, provide an opportunity to contest that decision. The CDS also agreed with the Board's finding that because the results of the AR/MEL were not disclosed to the grievor, his entitlement to procedural fairness was violated. The CDS directed that his release item be changed.

Reimbursement of Pet Care Expenses

The grievor was attached posted to Operation ATHENA, while his spouse, also a member of the Canadian Forces, was deployed to the same Operation a few weeks later. During the one-week overlapping period of deployment of both spouses, their family pet was placed in a kennel. The grievor requested the reimbursement of this expense.

The Board found that while there are no specific policies for reimbursement of pet care expenses, the fair and equitable resolution of the matter in the given circumstances, was for the Crown to cover this expense. The Board recommended that the CDS refer the case to the Minister with the recommendation that he use his discretionary authority to reimburse this expense.

The CDS disagreed with the Board's recommendation to refer the case to the Minister, contrary to what he had done in a previous file. The CDS considered that the circumstances of the case relied on by the Board were significantly different from the grievor's situation. The individual concerned was attached posted for a longer period of time. The individual was single which, with the length of the attach posting, necessitated the household to be shutdown. In the circumstances of the other file, the expense was minor and not a normal expense to maintain the household. The expense incurred in the other case was comparable to a relocation expense.

Recommendations on Systemic Issues

The Board's mandate places it in an ideal position to identify systemic issues. In the context of individual cases, the Board makes several recommendations of a systemic nature to the CDS. For example, where it identified inconsistencies in a policy that led to inequities, or where it noticed a potential or a need for broader improvements in the Canadian Forces generally, the Board has recommended that the CDS take additional action, beyond the disposition of the individual grievance.

For the decisions rendered in 2005, the CDS endorsed recommendations on systemic issues. A sample of these cases is presented below.

Treatment of Reservists Employed at Cadet Summer Training Camp

The grievor, a member of the Cadet Instructor Cadre (CIC), grieved the fact that he did not receive Separation Expense (SE) while he attended a Cadet Summer Training Camp (CSTC). The grievor denounced the practice of attach posting CIC members while Regular and Primary Reserve (P Res) Force members attended CSTCs on Temporary Duty (TD), alleging that the practice was discriminatory.

The Board found that the grievor was not entitled to SE. The Board also found that the practice of attach posting CICs to CSTCs was not discriminatory but it was inequitable in the circumstances of this case.

The Board recommended that the CDS amend the current instruction which requires CIC members to be attach posted for CSTC duties while other component members are on TD. Further, the Board recommended the CDS consider means of retroactively awarding the grievor TD benefits for the period in question. Subsequent to the Board's findings and recommendations, the grievor indicated that he accepted the Board's findings that he was not entitled to SE and that he did not suffer discrimination or unethical conduct.

The CDS partially agreed with the Board's recommendations. The CDS directed that the grievor be re-offered Leave Travel Assistance (LTA). The CDS agreed with the Board's finding that the practice of sending CIC officers to CSTCs on attached posting status compared to TD is inequitable, but he did not concur with the recommendation that the grievor be retroactively provided with TD benefits. The CDS also directed the Vice Chief of the Defence Staff to conduct a review to address the question of inequitable treatment of Reservists employed at CSTCs. The CDS added that this review should assess the need to treat CIC officers at CSTCs differently than other personnel, and the feasibility of harmonizing benefits.

Inconsistency on Child Care Funding at Home and Child Care During House Hunting Trip

The primary issue raised in this grievance was whether the grievor was entitled to reimbursement of the Canada Mortgage and Housing Corporation insurance premium, tax and fee. A secondary issue was whether the grievor was disadvantaged compared to higher income earners, as the amount of the funding envelope is based in part on the posting allowance, a salary-based benefit.

The Board found that the grievor's relocation benefits under the Integrated Relocation Pilot Project (IRPP) were calculated in accordance with the relevant IRPP policy directive, and that his claim was handled in a way that was consistent with the directive. The Board also found that the IRPP is not inequitable simply because it includes a salary-based benefit.

The Board recommended that the CDS deny the grievance, but that certain corrective measures be considered.

The CDS agreed with the Board's recommendation to deny the grievance. He was satisfied that the grievor received all of the benefits and allowances authorized under the IRPP. However, the CDS agreed with the Board that there is an inconsistency in providing for reimbursement from the core component up to a set maximum when child care is hired during the House Hunting Trip (HHT), but not paying anything from the core component when the same children are taken on the HHT. The CDS asked the ADM (HR-Mil) to ensure that the inconsistency identified by the Board be examined, that the feasibility of an amendment be explored, and a report provided to him in due course.

Standardized Approach to Recovery of Overpayments

The grievor was compulsorily remustered from a specialist occupation to a non-specialist occupation and was granted vested rights to pay. Due to a series of administrative errors, the grievor received salary overpayments in an amount exceeding $25,000. Nine years later, the CF determined that she was overpaid and recovery action was taken. The grievor was also informed that an amount in excess of $5,000 would be taken from her severance pay on release.

The Board reviewed the legislative provisions applicable to the recovery of overpayments by the Crown and noted that the provisions of the *Financial Administration Act* (FAA) confirm the Crown's right to recover overpayments of salary and allowances. The Board also reviewed FAA provisions, as well as Treasury Board (TB) regulations made under the authority of the FAA, which set out the circumstances in which a debt can justify write-off, remission or forgiveness.

The Board found that the overpayment was a valid debt owed to the Crown and the CF was justified in commencing recovery action. The Board found that the debt was not eligible for either write-off, remission or forgiveness, as it did not meet the criteria established by the FAA or TB.

The Board also found that the extended recovery period, which included a deduction from the grievor's severance pay, was calculated in a fair and equitable manner, in accordance with the applicable legislation and regulations, so as to reduce any financial burden the grievor may be faced with.

The Board recommended that the CDS deny the grievance. As it did previously in similar cases, the Board also recommended that the CF adopt a standardized approach to the recovery of overpayments.

The CDS agreed with the Board's findings and recommendations. He was satisfied that the CF was legally bound to recover the overpayment and that he did not have the authority to write-off, remit, or forgive the grievor's debt to the Crown.

Moreover, the CDS agreed with the Board's recommendation that a standardized approach to the recovery of overpayments be adopted. To that end, the CF is presently exploring the feasibility of amending the *National Defence Act* and the *Canadian Forces Superannuation Act*.

Restriction of Transportation Assistance Benefits

The grievor alleged that he was unjustly denied Transportation Assistance (TA) as a Class B Reservist employed in excess of 30 days. At one time, this benefit was routinely granted to all Class A and Class B Reservists who met certain criteria, regardless of the length of their period of service. The issuance of a Director Compensation and Benefits Administration (DCBA) policy message limiting TA to Class A Reservists and those Class B Reservists serving less than 30 days effectively disentitled the grievor to the allowance.

The Board found that the DCBA policy message illegitimately restricted the TA benefit by improperly disqualifying persons who otherwise met the regulatory criteria set out in Compensation and Benefits Instruction (CBI) article 209.045. The Board concluded that the entitlement provided by CBI article 209.045 must prevail, and found that the grievor was entitled to TA in accordance with the provisions laid out therein.

Notwithstanding, the Board found that restricting TA to 30 days or less for Class B Reservists was both reasonable and consistent with the original intent of the benefit, and that it was also in accordance with similar provisions in the Treasury Board Travel Directive.

As such, the Board recommended that the CDS request that the National Defence Headquarters administrators take the appropriate steps to seek an amendment to the Treasury Board regulation regarding TA.

The CDS agreed with the Board in part and partially granted the grievance. The CDS agreed with the Board that the DCBA policy message illegitimately restricted the TA benefit when it disqualified persons who met the criteria established by TB in CBI article 209.045. Accordingly, the CDS directed that the grievor be paid TA for the days on which he commuted to Class B place of employment.

The CDS also agreed with the Board's observation that the policy choice contained in the DCBA's message was reasonable and well aligned with similar provisions applicable to the public service; however, the appropriate means to bring about that objective was to seek an amendment to the directive in question. Consequently, the CDS directed that the ADM (HR – Mil) ensure that the DCBA message be rescinded, the systemic implications of this decision be examined, and a plan be developed to address the irregularities caused by the improper restriction of TA benefits.

Appendices

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Biographies

Diane Laurin

Chairperson

Diane Laurin was officially named Chairperson for the Canadian Forces Grievance Board on March 1, 2004; she had been acting in that role since June 2003, fulfilling both the duties of full-time Chairperson and full-time Vice-Chairperson, an appointment she had held since November 1999.

Ms. Laurin is co-founder of the Board, the first administrative tribunal mandated to review military grievances referred to it by the Chief of the Defence Staff. In this capacity, she has been instrumental in developing the Board's operational infrastructure and has played a key role in the implementation of new legislation (Bill C-25) and its regulations.

In June 2005, Ms. Laurin received the Canadian Forces Medallion for Distinguished Service. The Medallion is presented to persons who are not members of the Canadian Forces who render service of a rare and exceptionally high standard, and which is of a great benefit to the CF as a whole.

Prior to joining the Board, Ms. Laurin worked at the Montreal Urban Community (MUC) as a member of senior management for eleven years, four of which were spent at the Montreal Urban Community Police Service (MUCPS).

From 1987 to 1995, Ms. Laurin acted as Communications and Strategic Planning Advisor to the MUC President. In this capacity, she planned communications strategies that furthered the implementation of metropolitan policies in matters of public safety, public transit and economic development. She also participated in the preparation of many papers on issues such as prevention and law reform in the police environment.

From 1995 to 1998, Ms. Laurin was Assistant-Director and Chief of Staff to the Director of the Police Service. She participated in major files involving citizen security, public morality and criminal activity, as well as intercultural and race relations. Some examples are the ice storm, the Stanley Cup riots, the motorcycle gang wars and the Barnabé Case.

Ms. Laurin also took part in several projects touching upon collective agreement negotiations, work relations and professional ethics. She participated in a project called "Towards Neighbourhood Policing" which necessitated the re-engineering of the MUCPS and led the department to thoroughly review its mission and work practices.

Ms. Laurin began her career as a nurse, then obtained a Bachelor of Law degree from the University of Montreal (1982) and has been a member of the Quebec Bar Association since 1983. Ms. Laurin practiced immigration and civil law.

Ms. Laurin is member of the Canadian Bar Association and the Council of Canadian Administrative Tribunals; she is also on the board of directors for the Professional Development Centre for Members of Canadian Administrative Tribunals.

James Price
Vice-Chairperson

James Price began with the Board in January 2004 as a team leader in the Operations Directorate, and was appointed as full-time Vice-Chairperson in December of that same year. He brings to the position extensive experience in all areas of military law, including the military justice system, international law and operational law.

Originally from Twillingate, Newfoundland, Mr. Price joined the University Naval Training Division in 1966 while attending Memorial University. After seven years of active service, he attended Dalhousie University, graduating with a Masters of Public Administration in 1976 and a Bachelor of Laws in 1980, the same year he was called to the Bar of Newfoundland.

He engaged in private legal practice before joining the Canadian Forces (CF) in 1981, as a legal officer in the Office of the Judge Advocate General (JAG).

During his time with JAG, Mr. Price served as director of prosecutions and appeals, where, in addition to coordinating prosecutions and appeals in the CF, he guided the section through its transition to an independent prosecution service. He subsequently served as the deputy director of the new Independent Military Prosecution Service.

After serving as Assistant Judge Advocate General (Europe), Mr. Price was appointed a military judge by the Governor in Council in 2001, a position he held until 2003. During this time, he presided over cases involving both service offences and offences under the *Criminal Code of Canada*.

Naomi Z. Levine

Naomi Z. Levine was appointed as a part-time Member of the Board on March 21, 2000. Ms. Levine, from Winnipeg, Manitoba, is a lawyer, ethicist, chartered mediator and workplace dispute consultant, with extensive experience in conducting inquiries. She has been a harassment consultant for several companies, universities and governments. As a lawyer, Ms. Levine has specialized in criminal, labour and corporate law, among others. She obtained a Bachelor of Arts from the University of Winnipeg and a Masters of Arts and a Bachelor of Laws from the University of Manitoba. She has a weekly radio program, "Levine's Law," on CBC Winnipeg.

Wendy E. Wadden

Wendy E. Wadden was appointed as part-time Member of the Board on March 31, 2000. Ms. Wadden, from Sydney, Nova Scotia, is a lawyer in private practice since 1984. She has been a full-time instructor in the School of Business at Cape Breton University since 1987 and is a member of the Nova Scotia Barristers' Society and the Cape Breton Barristers' Society. She has a Bachelor of Commerce (Honours) and a Bachelor of Law from Dalhousie University. During her time at University College of Cape Breton, Ms. Wadden served as a member of the Academic Council, the Academic Appeals Committee, and as Chair of the School of Business. She has been an active member of community oriented organizations such as Crime Stoppers, Second Chance and the Interagency Committee on Family Violence.

Michel Crowe

Michel Crowe was appointed as a part-time Member of the Board on February 28, 2003. He studied law at the University of Montréal before being called to the Bar of Quebec in 1968. He served in the Canadian Armed Forces from 1962 until 2000, first with the reserve force for five years in the Canadian Officer Training Corps and as an infantry officer in the Régiment des Fusiliers Mont-Royal. He then transferred to the regular force as a military lawyer with the Office of the Judge Advocate General in 1967. Mr. Crowe was an Assistant Judge Advocate General in Lahr, Germany, as well as in the Province of Quebec. He appeared as counsel before the Court Martial Appeal Court and headed several subdivisions of the JAG head office at National Defence Headquarters. He also served as legal advisor for Supreme Headquarters Allied Powers Europe, participating in several international negotiations with NATO. Mr. Crowe taught civil law and the laws of war at the Royal Military College of Saint-Jean-sur-Richelieu, Quebec, and continues to teach military law. Throughout his military career, he has counselled on military grievances and is accredited as a mediator by the Bar of Quebec.

Gwen Barbara Hatch

On May 6, 2003, Gwen Barbara Hatch was appointed as a part-time Member of the Board. Ms. Hatch, from Winnipeg, Manitoba, is a partner with the law firm of D'Arcy & Deacon. She has extensive court experience and has appeared at all levels of court, including the Supreme Court of Canada. She has been in private practice since 1981. Ms. Hatch is very active in her community and professional associations, serving as chair of the St. Boniface Hospital and Research Foundation, and as a member of the Board of Trustees of Sturgeon Creek United Church. She has held the positions of course head and instructor for the wills and estates and ethics bar admission courses, respectively, for the Manitoba Law Society and as board member of the Family Mediation Canada–Family Mediation Manitoba, and the Society of Trust and Estate Practitioners. Ms. Hatch received the Queen's Golden Jubilee Medal in 2002.

Gary N. Wiseman

Gary Wiseman was appointed as a part-time Member of the Board on June 2, 2005. Mr. Wiseman is a Professional Engineer with advanced degrees in Civil, Mechanical, and Naval Architecture. His experience includes 25 years of "coming up through the ranks" in the Canadian Navy, four years in the federal public service and 15 years in private practice that included a wide range of technical and managerial responsibilities. Mr. Wiseman has served both in Canada and abroad and brings to the Board a spectrum of life experiences and a firm dedication to the military as an important element of the Canadian mosaic.

Marc F. Tremblay

Mr. Tremblay was appointed as part-time Member of the Board on December 5, 2005. He was called to the Barreau du Québec (Quebec bar association) in 1986 after having completed his law studies at Université Laval and is a specialist in the area of restructuring and insolvency. He intervenes frequently and actively in restructuring cases, both those involving compromises under the *Bankruptcy and Insolvency Act* and winding-up arrangements under the *Companies' Creditors Arrangement Act* (C-36), as well as in the area of company bankruptcies and liquidations. His skills and expertise are sought by both creditor companies and those experiencing financial difficulties. Mr. Tremblay is a frequent guest speaker and trainer in the areas of insolvency and commercial law, at the invitation of companies, financial institutions, and the Ordre des comptables agréés du Québec (Québec association of chartered accountants). In addition, he is the author of many texts, including the syllabus for a course in credit management that he has taught for members of the Ordre des comptables agréés du Québec.

Financial Table

Planned Spending 2005-2006* **(In dollars)**	
Salaries, wages and other personnel costs	3,523,276
Contribution to employee benefit plans	704,655
Subtotal	**4,227,931**
Other operating expenditures	2,228,999
Total planned expenditures	**6,456,930**

*As of January 31, 2006.
Actual expenditures will change from the planned spending

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